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Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, submitted pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1. In it, the Special Rapporteur examines the current human rights situation in the Occupied Palestinian Territory, with a particular emphasis on the role and challenges faced by human rights defenders.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

I. Introduction

1. The present report is the first submitted by the current Special Rapporteur to the Human Rights Council pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1, having assumed his mandate on 1 May 2016.[1] He is the seventh Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

2. The Special Rapporteur would like to draw attention once again to the fact that he has not been granted access to the Occupied Palestinian Territory, nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted. The Special Rapporteur notes that an open dialogue among all parties is essential for the protection and promotion of human rights. In addition, he emphasizes that access to the territory is an important component that helps in the development of a comprehensive understanding of the situation. While he notes that reliance on the exemplary work of a number of experienced and extremely competent civil society groups provides an excellent basis for his work, he laments being unable to meet many of those carrying out this work, due to his exclusion from the territory and the difficulties those individuals often face when seeking to obtain exit permits from the Israeli authorities, particularly from Gaza.

3. The present report is based primarily on written submissions and consultations with civil society representatives, victims, witnesses and United Nations representatives. The Special Rapporteur undertook his first mission to the region, to Amman, from 10 to 15 July 2016. In addition, throughout December 2016 he held consultations with civil society by videoconference and received a number of written submissions, in particular related to the work of human rights defenders.

4. In the present report, the Special Rapporteur focuses on the human rights and humanitarian law violations committed by Israel.[2] As the occupying Power, Israel has the legal obligation to ensure respect for and protection of the rights of Palestinians within its control.[3] The mandate of the Special Rapporteur thus focuses on the responsibilities of the occupying Power, although he notes that human rights violations by any State party or non-State actors are deplorable and will only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur also wishes to extend his thanks once again to all those who travelled to Amman in July 2016 to meet with him and to those who were unable to travel but made written or oral submissions. The Special Rapporteur acknowledges the essential work being done and efforts undertaken by such groups to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses. The Special Rapporteur will support that work as much as possible.

6. The present report is set out in two parts. First, it provides an overview of the current human rights situation in the Occupied Palestinian Territory. This discussion, while not exhaustive, aims to highlight those human rights concerns the Special Rapporteur has identified as particularly pressing.

7. In the second part of the report, the Special Rapporteur examines the work of human rights defenders in the Occupied Palestinian Territory, both the growing challenges they

[1] In October 2016, he also submitted a report to the General Assembly (A/71/554).

[2] As specified in the mandate of the Special Rapporteur set out in resolution 1993/2.

[3] See Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 47.

face and the critical work they do in attempting to bring justice to an environment in which human rights are increasingly subverted by a prolonged occupation soon to reach half a century.

II. Current human rights situation

8. Reports of recurring, persistent human rights violations, including excessive use of force, collective punishment, forced displacement and restrictions on the freedom of movement, have been reported throughout 2016 (see A/71/554). The backdrop against which all of this has occurred is one of what appears to be increasingly extreme rhetoric from Israeli political and government leaders. Legislation related to the legalization of outposts suggests an ever-shrinking opportunity for Palestinians to realize their right to self-determination. The international community, while seeking to spur the peace process, continues to fail to place human rights at the centre of its efforts.

A. Settlements

9. On 23 December 2016 in resolution 2334 (2016), the Security Council reaffirmed that the establishment of settlements in the West Bank was a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace. Less than a month after the passage of that resolution, the Government of Israel announced plans for roughly 6,000 new settlement units in the West Bank, including East Jerusalem. It was proposed that several of those units would be built outside the current settlement blocs.[4] Approvals of settlement units in 2016 were limited in size to the hundreds, not thousands as in the most recent announcements. France noted in its condemnation of the announcement of the new units that the amount announced in the space of a week in 2017 was double the total number of units approved in 2016.[5] In addition, the second half of 2016 saw a year-end uptick in new construction over the previous two years.[6]

10. Along with the announcement of new settlement construction have come reports of increasing incidents of demolitions of Palestinian homes in the West Bank, including East Jerusalem. As of late January 2017, a total of 105 demolitions had been recorded in Area C and 14 in East Jerusalem since the start of the year.[7] Demolitions in 2016 in the entirety of the West Bank, including East Jerusalem, totalled 1,093,[8] which is the highest number recorded since the Office for the Coordination of Humanitarian Affairs began collecting the data in 2009.[9] The demolitions in 2016 displaced 1,593 Palestinians and negatively affected the livelihoods of 7,101 others.[10] Demolitions, threats of demolition and lack of protection from demolition all contribute to the creation of a coercive environment, in which people might feel that they have no choice but to leave their land and their homes (see A/HRC/31/43, para. 46). The risk of forcible transfer resulting from the coercive environment is particularly high among Bedouin communities in Area C (see A/71/355, para. 22).

11. February 2017 saw the passage of controversial legislation in the Knesset that legalized the confiscation of private Palestinian land. The so-called regularization bill legalizes roughly 3,000 housing units built on private Palestinian land in the West Bank,

[4] Gili Cohen, "Israel approves thousands of new settler homes ahead of West Bank outpost's evacuation," *Haaretz*, 21 March 2017; statement by the Special Rapporteur, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21141&LangID=E.

[5] Statement by the spokesperson for the Ministry of Foreign Affairs and International Development, available from http:// franceintheus.org/IMG/html/briefing/2017/DDB-2017-02-01.html.

[6] See: http://peacenow.org.il/en/40-increase-construction-starts-west-bank-settlements-2016.

[7] See www.ochaopt.org/content/protection-civilians-weekly-report-10-23-january-2017.

[8] Ibid.

[9] See www.ochaopt.org/content/record-number-demolitions-2016-casualty-toll-declines.

[10] Ibid.

which were previously considered illegal even under Israeli law. In 16 of the outposts affected, Palestinian landowners have successfully challenged the settlers' presence on the land in Israeli courts, which have issued demolition orders against the settlers' homes. However, those orders have yet to be implemented and under the new law implementation of the orders will be frozen for a year.[11]

12. The new legislation has triggered condemnation from the international community, with a spokesperson for the Federal Foreign Office in Germany stating that its confidence in the "Israeli Government's commitment to the two-state solution has been profoundly shaken" and the High Representative of the European Union noting that the law "would further entrench a one-state reality of unequal rights, perpetual occupation and conflict".[12] The spokesperson for the Secretary-General noted deep regret at the passage of the law, warning of far-reaching legal consequences for Israel and insisting on the need to avoid any actions that would derail the two-State solution.

East Jerusalem

13. Of the several thousand settlement homes announced in January 2017, 566 are to be built in East Jerusalem. At the same time that approval of the construction was announced, the Deputy Mayor of Jerusalem announced plans for the approval of 11,000 additional units, although it is not clear when these might move forward.[13] Of the home demolitions that took place in 2016, 88 occurred in East Jerusalem.[14]

14. Following the 1967 war, Israel unilaterally declared the annexation of East Jerusalem, in contravention of international law. The annexation has not been recognized by the international community and Palestinians, see East Jerusalem as the future capital of a Palestinian State. Palestinians living in the city in 1967 were given permanent resident status, which civil society has suggested is akin to treating them as persons who have voluntarily chosen to immigrate to Israel.[15] The permanent resident status can be revoked on a number of grounds[16] and since 1967 as many as 14,000 Palestinians have lost their status and been unable to continue living in, or return to, their homes in East Jerusalem.[17]

15. In addition to home demolitions, Palestinian residents of East Jerusalem are vulnerable to being forcibly evicted from their homes. According to the Office for the Coordination of Humanitarian Affairs, Israeli settler organizations seeking control of parts of East Jerusalem, particularly the Muslim and Christian areas of the old city, have launched eviction proceedings against Palestinian families. As of November 2016, that had affected 180 households (818 individuals, including 372 children).[18] At the same time, the

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[11] Allison Kaplan Sommer, "Explained: Israel's new land-grab law and why it matters," *Haaretz*, 7 February 2017.

[12] See www.auswaertiges-amt.de/sid_C4BF59984EE3B4886B4BA626F47DA791/EN/Infoservice/Presse/Meldungen/2017/170207-ISR_Gesetz_Legalisierung_Aussenposten.html; and eeas.europa.eu/headquarters/headquarters-homepage_en/20104/Statement%20by%20High%20Representative/Vice-President%20Federica%20Mogherini%20on%20the%20%22Regularisation%20Law%22%20adopted%20by%20the%20Israeli%20Knesset.

[13] Bethan McKennan, "Israel announces plans for a further 11,000 settler homes in East Jerusalem", *Independent*, 27 January 2017; "Israel approves 566 new homes in east Jerusalem settlements", *Deutsche Welle*, 22 January 2017.

[14] B'Tselem, "Statistics on demolition of houses built without permits in East Jerusalem", 20 March 2017, available from www.btselem.org/planning_and_building/east_jerusalem_statistics.

[15] B'Tselem, "Background on East Jerusalem", 11 May 2015, available from www.btselem.org/jerusalem.

[16] Palestinians living in East Jerusalem must be able to prove the centre of their life is in East Jerusalem and may not live abroad for more than seven years if they wish to maintain their residency rights.

[17] See www.ochaopt.org/location/east-jerusalem.

[18] See www.btselem.org/planning_and_building/east_jerusalem_statistics and www.ochaopt.org/sites/default/files/evictions_community_sum_ej_2016_final_1_11_2016.pdf.

majority of the individuals affected by demolitions in 2016 were children (160 out of 295).[19]

16. As noted in the previous report of the Special Rapporteur, Palestinian communities in the West Bank, including East Jerusalem, are often subject to closures of streets that effectively seal off entire neighbourhoods, checkpoints and a heightened police presence, often as a form of collective punishment (see A/71/554, paras. 25-32). Defense for Children International-Palestine has called 2016 the deadliest year in a decade for Palestinian children in the West Bank, including East Jerusalem, with 32 children killed by Israeli forces. Proximity to large numbers of police officers in a tense environment, the near daily need to pass through checkpoints and the risk of eviction and demolition not only put children at risk of arrest, detention and abuse, but they also significantly limit access to basic services, including education.

17. Education in Jerusalem has become a political tool for some members of the Government of Israel, with the Education Minister, Naftali Bennet, declaring the 2016 school year "United Jerusalem" year, noting that it marks the fiftieth year since Israel unilaterally annexed East Jerusalem. Schools in East Jerusalem already receive significantly less funding than those in West Jerusalem, despite the existence of laws and High Court rulings that aim to prevent such discriminatory practices.[20] A 2011 High Court ruling held that the shortage of classrooms in East Jerusalem in the official educational system constituted a violation of the students' right to education, and mandated the construction of thousands of additional classrooms.[21] As of 2016, the classroom shortage stood at 2,672, having only worsened since 2011.[22] Adalah, a legal centre for minority rights in Israel, noted that the High Court ruling made no mention of funding being conditional on the adoption of a particular curriculum and added that an unequal budgetary allocation that only had an impact on Arab schools would amount to discrimination.[23] The right to education is guaranteed by article 13 of the International Covenant on Economic, Social and Cultural Rights, to which Israel is a party. It therefore has an obligation to respect, protect and fulfil, with the obligation to fulfil incorporating the obligation to both facilitate and provide. The Committee on Economic, Social and Cultural Rights has further noted that education is both a human right in itself and an indispensable means of realizing other human rights, and that it must be accessible to everyone, without discrimination.[24]

B. Gaza

18. In 2017, the Israeli blockade of Gaza enters its tenth year. As previously stated by the Special Rapporteur (A/71/554, para. 31) and the Secretary-General (A/HRC/24/30, paras. 21-23),[25] the closure of Gaza amounts to collective punishment, which is prohibited under international law.[26] Despite repeated calls to end the blockade from the international community, the situation on the ground is growing worse.[27] The movement of people in and

[19] See www.btselem.org/planning_and_building/east_jerusalem_statistics.

[20] See Adalah, "Conditioning budgets for repairing East Jerusalem schools on adoption of Israeli curriculum is illegal", 17 August 2016 and Nir Hasson, "Arab students in Jerusalem get less than half the funding of Jewish counterparts", *Haaretz*, 23 August 2016.

[21] Association for Civil Rights in Israel, "HCJ: authorities have 5 years to provide public education in East Jerusalem", 6 February 2011.

[22] Ir Amim, "Between the hammer and the anvil: persistent neglect and attempted coercion in the East Jerusalem education system" (September 2016).

[23] Adalah, "Conditioning budgets".

[24] Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education.

[25] See also www.unrwa.org/newsroom/official-statements/remarks-un-secretary-general-ban-ki-moon-press-encounter-gaza.

[26] Fourth Geneva Convention, art. 33. The Human Rights Committee has further noted that the prohibition on collective punishment is non-derogable: see general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency.

[27] The previous report of the Special Rapporteur (A/71/554) addressed the economic and development impact of the blockade in depth.

out of Gaza has in the past year become increasingly difficult as the number of permits revoked or denied has steadily increased. In addition, the infrastructure is under increasing strain and while some import restrictions have been lifted, that has not been enough to allow for the adequate maintenance and development of the public utilities needed to serve a densely populated area of nearly 2 million.

Permit denials

19. Movement restrictions have been a permanent fixture of the blockade, with exit permits granted only to a small fraction of the population, usually patients seeking medical treatment, business people and the staff of humanitarian agencies. Even among those groups, permits have often been arbitrarily denied.

20. Indeed, a large majority of residents face the prospect of never being permitted to leave. Movement restrictions undermine the rights to health care, work, education and family life, and negatively affect the right of Palestinians to self-determination (see A/HRC/31/44, para. 11).

21. With the near-continuous closure of the Rafah crossing into Egypt since mid-2013, the Erez crossing has become the main entry and exit point for Palestinians in Gaza.[28] While travel out of Gaza through Erez has not been an impossibility since the imposition of the blockade and in fact the number of permits granted has seen a relative increase since 2013,[29] the second half of 2016 saw a high rate of permit denials and revocations for all classes of Gaza residents (merchants, patients and others).[30] According to figures provided to the Gisha Legal Center for Freedom of Movement by the Coordinator of Government Activities in the Territories (the Israeli agency that regulates movement of goods and people into and out of Gaza), in 2016 only 46 per cent of exit permit requests were granted, compared to 80 per cent in 2013.

22. The World Health Organization reported that as of October 2016, the approval rate for health permit applications had dropped to 44 per cent. In 2012 it had been as high as 92 per cent. Since then, there has been a steady decline in the approval rate, with the most dramatic drop seen between 2015 (77.5 per cent) and 2016 (44 per cent).[31] Physicians for Human Rights — Israel receives a steady stream of requests from patients seeking support in the event of their being denied a permit. In 2015, in 61.7 per cent of such cases the denials were successfully revoked.[32] In the first half of 2016, that rate was only 25 per cent.

23. Those seeking permits to accompany family members traveling for medical treatment have also been subject to greater rates of denial and increasing scrutiny. According to Physicians for Human Rights — Israel, after seeing an increase in denials of permit requests for medical escorts they inquired with the Israeli authorities as to whether the process had changed. At that time, the Coordinator of Government Activities in the Territories confirmed that it had implemented increased restrictions on those under the age of 55 seeking escort permits. In one case, a breastfeeding mother was prohibited from escorting her infant daughter for follow-up treatment to lifesaving surgery. The baby had to be escorted instead by her 74-year-old grandfather. This was a long and difficult journey for the grandfather, as well as for mother and daughter, owing to the age of the child and her dependence on breast milk.[33]

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[28] Between October 2014 and the end of 2016, the Rafah crossing was open for a total of 83 days, see www.ochaopt.org/sites/default/files/crossing_december_2016.pdf.

[29] See www.gisha.org/UserFiles/File/publications/Inside_look_at_gaza/Gaza_in_no.en.pdf.

[30] See Gisha factsheet "Security blocks restricting travel through Erez Crossing", September 2016, available from www.gisha.org/publication/5551.

[31] WHO, "Right to health: crossing barriers to access health in the occupied Palestinian territory, 2014-2015" (2016).

[32] Physicians for Human Rights — Israel, submission to the Special Rapporteur, 7 November 2016. Note: these figures represent cases from both the West Bank and Gaza, with a majority of the cases coming from Gaza.

[33] Ibid.

24. In December 2016, the Office for the Coordination of Humanitarian Affairs noted a serious deterioration in the access to Gaza and the ability to leave it for humanitarian staff, having documented an increase in permit denials from 4 per cent in 2015 to 40 per cent in the third quarter of 2016.[34] In addition, at that time, the Office reported that 60 United Nations national staff had not only been denied exit permits, but were prohibited from reapplying for a period of 12 months.[35] An increase in the revocation of permits for national staff of international organizations at the Erez crossing was also documented in 2016 as compared to 2015.[36]

25. Preventing humanitarian staff from entering and leaving Gaza may amount to a violation of the duty of the occupying Power to facilitate and allow the delivery of humanitarian aid, as provided for in article 23 of the Fourth Geneva Convention.[37] Furthermore, two humanitarian workers in Gaza were arrested by the Israeli authorities in 2016, allegedly for connections to Hamas. Restrictions on humanitarian work and human rights work only serve to further isolate the already vulnerable residents of Gaza. These events echo the harassment and challenges faced by human rights defenders working in the West Bank and Gaza, which are discussed in more detail below.

26. In 2016, exit permits were also increasingly denied, allegedly on security grounds and often without any further information given for the reason, making it practically impossible for decisions to be challenged.[38] There is a constant tension in all nations between balancing individual rights and freedoms with the security of the State, but that balance must constantly be sought. Any derogation from human rights law must be undertaken without discrimination, must be prescribed by law, must be narrowly tailored to a specific, legitimate purpose and must be both necessary and proportional to any threat.[39]

Infrastructure

27. While the residents of Gaza face increasing challenges in their attempts to move freely to other parts of the world, or even to the West Bank, the infrastructure of the densely populated area continues to crumble. That was demonstrated most starkly during an electricity crisis at the beginning of 2017. During that crisis, residents had access to as little as three hours of electricity per day, in the midst of a cold winter.[40] Even when not in crisis, residents of Gaza have access to electricity only in eight-hour cycles. In January 2017, they took to the streets to protest against the electricity shortage, calling on the authorities to find a solution to the ongoing problem.

28. Electricity shortages have been a regular occurrence since 2007 and have a significant impact on the provision of basic services, including access to health care, while also undermining livelihoods in an already precarious economic climate.[41] Electricity in Gaza is provided by Israel, Egypt and a power plant opened in Gaza in 2002. Israel controls its own sale of electricity to Gaza and the import of fuel. In 2007, Israel decided to reduce the amount of fuel and electricity to Gaza to an amount that, according to Gisha, fell short of meeting essential needs.[42] Owing to damage to the power plant caused by Israeli airstrikes, it does not operate at full capacity. Comprehensive repairs have not been conducted, in large part due to restrictions on the import of items the Israeli authorities consider to be "dual use". Israel also controls the entry and exit of individuals with the

[34] See www.ochaopt.org/content/serious-deterioration-access-humanitarian-staff-and-gaza.

[35] Ibid.

[36] Gisha, "Security blocks restricting travel through Erez Crossing".

[37] See also customary international humanitarian law rule 55.

[38] Gisha, "Security blocks restricting travel through Erez Crossing".

[39] See, for example, Office of the United Nations High Commissioner for Human Rights (OHCHR) fact sheet No. 32, "Human rights, terrorism and counter-terrorism" (2008), p. 24.

[40] Jack Khoury, "With only 3 hours of electricity a day, Gaza is 'on verge of explosion'," *Haaretz*, 7 January 2017.

[41] See gaza.ochaopt.org/2015/07/the-humanitarian-impact-of-gazas-electricity-and-fuel-crisis/.

[42] Gisha, "Hand on the switch: who's responsible for Gaza's infrastructure crisis?" (January 2017), p. 6.

necessary expertise to repair, maintain and upgrade the plant, as well as the exit of Palestinians from Gaza, who might seek to obtain the training they need.[43]

29. While the Israeli authorities claim that Hamas was to blame for the crisis, that ignores the fact that the crumbling infrastructure is in large part a result of the 10-year-long blockade of Gaza. While the political divide between Gaza and the West Bank plays a role in the difficulties faced by the residents of Gaza,[44] the biggest challenge comes from the illegal blockade and the fact that people and goods cannot move freely into and out of the territory.

III. Human rights defenders

30. Human rights defenders in Palestine and Israel who investigate the grave human rights situation in the Occupied Palestinian Territory are facing a steadily shrinking space for their indispensable work. In recent years, human rights organizations and individuals have engaged in highly effective local, regional and international advocacy and litigation, and have acted as witnesses and ambassadors of conscience in reminding the world that the occupation is becoming ever more immutable. As a result of their effectiveness, human rights defenders have been subjected to a range of physical attacks, incarceration and threats to their lives and safety. They have experienced sophisticated interference and toxic denunciations aimed at silencing their voices and discouraging their supporters, and engendering an increasingly hostile public atmosphere in Israel and in particular among the settlement movement, stoked by the political leadership and the media of the occupying Power and obstructive legislation enacted or being considered by the Knesset.

31. Human rights defenders have faced repeated violations of their fundamental freedoms of assembly, expression, movement and association. That disquieting trend has accompanied the deepening entrenchment of the occupation, as the political forces in favour of permanent rule by Israel over some or all of the Occupied Palestinian Territory have targeted Palestinian and Israeli human rights defenders as among the primary obstacles to the achievement of that goal.[45]

A. Protection of human rights defenders in international law

32. Through the instruments of international law and formal declarations, the international community has created a legal framework to protect the vital work of human rights defenders in advancing the cause of human rights globally and locally. Those legal protections are essential for a number of reasons. First, the work of human rights defenders is often the best, and sometimes the only, protection available to vulnerable and marginalized peoples. Second, the activities of human rights defenders are critical to ensuring that Governments and private actors can be held accountable for their behaviour, both to the citizenry and to the conscience of the world. Third, the actions of human rights defenders often place them in situations of danger and vulnerability with respect to their own rights and safety. And fourth, the condition of human rights in any country or conflict situation can often be effectively measured by the respect accorded in practice to human rights defenders.

33. While the commitment of public authorities to enacting effective human rights legislation, to creating an independent and impartial judiciary, to maintaining the rule of law, to ensuring that its military and police uphold human rights norms and to encouraging a positive public climate for human rights is vital to the promotion of those fundamental rights, the civil society work of human rights defenders is equally indispensable. They are the canaries in the social mineshaft, offering early warning alerts about rights that are in

[43] Ibid.

[44] See www.ochaopt.org/content/impact-internal-divide-municipal-services-gaza-strip and Gisha, "Hand on the switch".

[45] For a comprehensive review of the situation of human rights defenders in the Occupied Palestinian Territory and Israel from 2006, see E/CN.4/2006/95/Add.3.

danger. They provide invaluable advocacy, independent and reliable analysis, effective protection, the courage to protest and oppose and both a progressive interpretation of existing rights and a vision of new rights in embryo. The work of human rights defenders animates and enlarges the enjoyment of human rights for the rest of us. They are commonly our first voices for human rights and, too often, our last line of defence. If their work is in jeopardy anywhere, we are all more precarious and less secure.

34. The rights and responsibilities that protect the work of human rights defenders are well-entrenched in international law. Among other primary human rights instruments, the Universal Declaration of Human Rights[46] and the International Covenant on Civil and Political Rights[47] both proclaim the inalienable freedoms of opinion and expression, movement and peaceful assembly and association. These fundamental instruments champion not only the human rights of all peoples, but also the activities of human rights defenders.

35. By its resolution 53/144, the General Assembly adopted by consensus the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). The purpose of the Declaration is to secure and entrench the right of groups and individuals to defend human rights without fear or interference.[48] While not a binding legal instrument itself, the Declaration enshrines many of the principles and rights that have been already grounded in international law through other conventions and covenants. In its preamble, the Declaration provides for, among other things, the following:

(a) The effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to foreign domination or occupation;

(b) That the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State;

(c) The right and responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels.

36. The Declaration sets out a broad range of rights and protections for human rights defenders, including primarily to seek the protection and realization of human rights and fundamental freedoms at the national and international levels (art. 1). It reaffirms essential human rights in the context of this critical work, such as freedom of association and assembly and freedom of opinion and expression. It highlights particularly important rights and protections for human rights defenders, including the freedom to raise issues with and criticize governmental bodies (art. 8), the right to an effective remedy (art. 9) and the right to solicit, receive and utilize resources for the express purpose of peacefully promoting and protecting human rights (art. 13), among others.

37. The Declaration further imposes specific responsibilities and duties on States, including primarily the promotion, protection, and implementation of all human rights (art. 2). Specifically, States are called upon to provide effective remedy to those whose rights have been violated, to promptly and impartially investigate alleged violations (art. 9) and to promote public understanding of all human rights (art. 14). It need not be re-emphasized that these protections and obligations apply equally to human rights defenders, even if they

[46] While the Universal Declaration of Human Rights is not a legally binding instrument per se, virtually all of the rights therein are embedded in international law through subsequent legally binding treaties and conventions.

[47] Israel is a party to the Covenant, having ratified it on 3 October 1991.

[48] For a valuable overview of the Declaration, see Special Rapporteur on the situation of human rights defenders, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (July 2011) and OHCHR fact sheet No. 29.

are openly critical of government entities, policies or actions in the name of promoting and protecting human rights (art. 12).

B. Shrinking space for human rights defenders

38. In compiling the evidence for the present report, the Special Rapporteur has been in direct communication with human rights organizations in Palestine and Israel. Their common observation was that the protections and respect accorded to them, which were already precarious by the end of 2008, had declined precipitously after operation Cast Lead in Gaza in December 2008 and January 2009. This hostile atmosphere for human rights defenders has since become even more overtly toxic and harsh since 2015, in the aftermath of operation Protective Edge in Gaza in 2014 and the subsequent initiation by the International Criminal Court of a preliminary investigation, with the cooperation of a number of Palestinian human rights defenders, into possible war crimes and crimes against humanity committed during the most recent Gaza conflict and by the Israeli settlement project. In the words of one leading human rights group: "We are seeing a general assault by the government and right-wing groups on those parts of Israeli society that are still standing up for democratic values. The aim is to silence us."[49]

Threats and assaults

39. Palestinian human rights organizations report that they have endured a repressive working environment in recent years, with their day-to-day operations stymied by concerted efforts from the Government of Israel, the Israeli military, private Israeli organizations and unknown individuals or groups to discredit and sabotage their work.[50] The escalation in threats and physical assaults, cyberattacks, arrests and incarceration under military and administrative orders and bans and restrictions on movement is exacerbated by the absence of any effective means for remedies or protection. A report by the Human Rights Defenders Fund in 2015 found that the Israeli military and the occupation authorities had employed a promiscuous range of criminal, security and legal tools to harass and constrain the entirely legitimate and peaceful activities of human rights defenders in the Occupied Palestinian Territory. As the author observed: "In addition to draconian legislative attempts and ongoing efforts to depict them as public enemies, many human rights defenders, particularly activists, are the target of systematic criminalization efforts. Protesters are arrested and detained even when they do not break the law, they are subjected to strict conditions of release and are often indicted simply for their efforts to promote human rights."[51]

40. Al-Haq, a leading Palestinian non-governmental human rights organization, has endured a grievous pattern of threats and cyberattacks and a campaign of attempted interference with its work by persons unknown. Beginning in the autumn of 2015 and continuing into 2016, a series of detailed letters from either anonymous individuals or individuals impersonating someone else were sent to donors and partners of Al-Haq, purporting to raise serious concerns about fraud, corruption, financial disarray, lack of transparency and organizational disunity at the organization. Al-Haq was obliged to expend considerable resources refuting the unfounded allegations, including having its auditors, Ernst and Young, assure the partners and donors that there had been no financial or

[49] Sarit Michaeli, spokeswoman for B'Tselem, quoted in David Shulman, "Israel: the broken silence", *The New York Review of Books*, 7 April 2016.

[50] The Special Rapporteur's mandate, as defined in resolution 1993/2, is focused on violations of the law committed by Israel as the occupying Power and thus the present analysis is limited to that discussion. There are undoubtedly other groups, such as the Government of the State of Palestine, who similarly have an obligation to respect and protect human rights, including those of human rights defenders.

[51] See www.alhaq.org/publications/papers/PHROC.Submission.to.UN.SR.on.the.OPT.Re.HRDs.Nov2016.pdf; Human Rights Defenders Fund, "Disturbing the peace: the use of criminal law to limit the actions of human rights defenders in Israel and the Occupied Palestinian Territories" (2015), p. 63.

institutional malfeasance. Other messages contained explicit threats to the lives or well-being of various Al-Haq employees, including its General Director, Shawan Jabarin.

41. The Al-Mezan Center for Human Rights, based in Gaza, received a series of anonymous e-mail messages, Facebook posts and calls in 2015 and 2016, sent to staff, donors and partners in which institutional corruption and mismanagement were alleged and explicit threats to the lives and safety of its employees were made. Like Al-Haq, Al-Mezan has been active since 2015 in advocating accountability before the International Criminal Court for possible war crimes.

42. Youth against Settlements, a Hebron-based human rights organization, has had its centre raided several times by Israeli soldiers and it has been effectively closed on occasions after the Israeli military declared the neighbourhood surrounding it to be a closed military zone.[52] In November 2016, the Israeli military conducted a night raid on the Health Development Information and Policy Institute, a Palestinian health advocacy organization based in Ramallah. They seized computers, servers and security camera footage, and left the offices in a shambles. In accordance with the Oslo Accords, the Palestinian Authority is supposed to have complete political and security control in Ramallah and other parts of Area A of the West Bank, but the Israeli military routinely tramples over this nominal Palestinian sovereignty.[53]

43. A number of individual Palestinian human rights defenders have encountered death threats, arrest and imprisonment, property damage and substantive interference with their right to peacefully protest. A short list of some of them, who all engage in non-violent activity, includes:

- Abdallah Abu Rahma, who was active in protests against the separation wall through the village of Bil'in, was arrested several times in 2016 and 2017 for his participation in non-violent events protesting against the occupation. In May 2016, he was arrested by Israeli soldiers for his involvement in the Alwada cycling marathon and held for 10 days. Most recently, he was arrested at an Israeli military court hearing, which he was attending to support six Palestinians who had been arrested for participating in a peaceful protest against the proposed annexation of occupied Palestinian lands in late January 2017. Additionally, Israeli soldiers have conducted night raids on his home and confiscated his laptop.[54]

- Imad Abu Shamsiyeh filmed the extrajudicial execution of a gravely wounded Palestinian by an Israeli soldier, Elor Azaria, in March 2016 in Hebron. The film was subsequently released publicly by the Israeli human rights organization B'Tselem and the soldier was later convicted of manslaughter by an Israeli military court. Mr. Abu Shamsiyeh has since received multiple death threats from Israeli settlers living in the vicinity, anonymous death threats delivered by e-mail or posted on Facebook, travel restrictions, the stoning of his home by settlers, harassment of his family and a raid on his home by Israeli soldiers, with no accountability for these attacks and threats.[55]

- Farid al-Atrash, a Palestinian lawyer with the Independent Commission for Human Rights in Bethlehem, was arrested by Israeli soldiers during a peaceful demonstration in Hebron in February 2016. He was charged with participating in an illegal demonstration and attacking soldiers, and remained in prison for four days before being released on bail. Video evidence appears to support his version that he

[52] Submissions from human rights organizations to the Special Rapporteur.

[53] Marsad, "Israeli forces invade Ramallah offices of healthwork NGO", 16 November 2016, available from www.marsad.ps/en/2016/11/16/israeli-forces-invade-ramallah-offices-healthwork-ngo/.

[54] Communication to a group of Special Rapporteurs from Scales of Justice and others, 27 January 2017; Human Rights Defenders Fund, communiqué, 5 December 2016.

[55] See https://www.frontlinedefenders.org/en/case/ongoing-threats-and-harassment-against-imad-abu-shamsiyya and Amnesty International, "Israeli government must cease intimidation of human rights defenders, protect them from attacks", 12 April 2016.

was peacefully holding a poster during the demonstration in front of Israeli soldiers when he was aggressively arrested.[56]

- Issa Amro, founder of the Hebron-based Youth Against Settlements, a community organization advocating non-violent action, has recently been charged by the Israeli military on 18 counts, including insulting an Israeli officer and incitement in connection with his work organizing peaceful protests calling for the re-opening of Shuhada Street in Hebron. Some of the charges are stale, dating back to 2010. During two of his recent arrests, he states that he was beaten by Israeli police while in custody. Amnesty International has called the charges against Mr. Amro baseless and an attempt to silence him.[57]

- Salah Khawaja, a member of the secretariat of the Boycott, Divestment, Sanctions national committee, was arrested during a night raid by the Israeli military on 26 October 2016 at his home in Ramallah (within Area A). His computer and phone were confiscated during the raid. He was subsequently detained and interrogated at the Israeli military facilities in Petah Tikvah. Reports suggest that he has been subject to harsh conditions during his incarceration, including strenuous interrogations, sleep deprivation and physical violence, with no charges laid against him and little or no access to a lawyer.[58]

- Hasan Safadi, the media coordinator for Addameer, a Palestinian prisoner support and human rights organization, was arrested by Israeli forces on 1 May 2016 at the al-Karameh bridge crossing with Jordan when returning home from a conference on Arab youth in Tunisia. He has been held in administrative detention since then at Ktziot prison in Israel, with the administrative detention order extended for an additional six months from 8 December 2016.[59] The Special Rapporteur notes that Israel's administrative detention system probably violates the exceptional nature of the measure permitted under international law, as does the incarceration of protected persons outside the occupied territory or country, in line with articles 76 and 78 of the Fourth Geneva Convention.

44. One highly illustrative and disturbing example of the current climate is the series of sophisticated death threats and menacing accusations issued to Nada Kiswanson, a human rights lawyer in The Hague, where she represents Al-Haq and other human rights defenders in Europe and before the International Criminal Court. Beginning in February 2016 and intensifying over the following months, Ms. Kiswanson received multiple phone and e-mail messages to private numbers and encrypted message services — some of them anonymous, others from individuals impersonating governmental, intergovernmental and international organizations — stating variously that she would be "eliminated", that she was "not safe at all and hopefully this would remain" and "Honey, you are in grave danger. You have to stop what you are doing". Thousands of fabricated leaflets with the Al-Haq logo were distributed to houses in the neighbourhood where she lives, describing Al-Haq as an organization "working to strengthen the Islamic base in the country", and asking for financial donations to be delivered to her home address. Funeral flowers were also left in front of her house. Amnesty International stated that it had to temporarily close its office in The Hague, after one of its employee's e-mail accounts had been hacked as a means of sending threats to Ms. Kiswanson. The Observatory for the Protection of Human Rights Defenders noted that these attacks demonstrated a high level of technological sophistication and financial backing. To date, police in the Netherlands have investigated the threats and have provided protection for Ms. Kiswanson, but they have been unable to locate their

[56] Amnesty International, "Israeli government must cease intimidation".

[57] Ibid.

[58] See European External Action Service, letter from the Managing Director for Middle East and North Africa concerning the arrest of Salah al Khawaja, 28 November 2016, and joint submission by 13 human rights defenders to the Special Rapporteur, 7 November 2016.

[59] See www.frontlinedefenders.org/en/case/detention-hasan-safadi.

source. This is the first known attack on Dutch soil against a human rights defender working on issues relating to the International Criminal Court.[60]

45. In June 2016, the Israeli military arrested Mohammed El-Halabi, the director of operations in Gaza for World Vision, on charges that he had diverted large amounts of aid money to the military wing of Hamas. World Vision is an international Christian humanitarian charity with global operations working on behalf of children and communities, and it has worked in Gaza for several decades. Mr. El-Halabi has been incarcerated by Israel since his arrest, with little access to legal counsel. World Vision stated in early February 2017 that it had not seen any credible evidence supporting the charges against Mr. El-Halabi and in fact the amount he was accused of diverting is much larger than the World Vision annual budget for Gaza. After conducting a thorough audit of its Gaza operations, World Vision stated that its review, to date, had not generated any concerns about the purported diversion of its resources. It has supported Mr. El-Halabi's presumption of innocence and his right to a fair trial. Mr. El-Halabi pleaded not guilty to the charges in early February 2017. His trial is continuing.[61]

46. Human rights organizations working in Gaza face a unique array of obstacles to the conduct of their work. Among the biggest is their non-existent freedom of movement, as described in detail above. For human rights defenders in Gaza this means that they are rarely allowed to journey to Israel, the West Bank or abroad. They cannot travel to regional or international human rights meetings and forums; they cannot attend external training programmes; their ability to participate by videoconferencing is restricted by the sporadic electricity supply in Gaza and the limitations of the medium; and their ability to interact, inform and work with the rest of the world is likewise diminished. This enforced isolation substantially impairs the protection and advancement of human rights in Gaza.[62]

47. Israeli human rights defenders who work on the many issues related to the Occupied Palestinian Territory are also experiencing an increasingly virulent environment. A moment that exemplifies this turning of the screw was in October 2016, when Hagai El-Ad, the Director-General of B'Tselem, together with Lara Friedman, the Director for Policy and Government Relations at Americans for Peace Now, delivered a presentation to the Security Council in New York. He warned of the expanding settlement enterprise and the deteriorating human rights situation for the Palestinians in the Occupied Palestinian Territory, and cited the need for effective international intervention to bring the Israeli occupation to an end.[63] In response, many in the Israeli political leadership stridently denounced B'Tselem, casting it as unpatriotic, traitorous and a political outcast. Prime Minister Benjamin Netanyahu condemned Mr. El-Ad for joining the "chorus of slander" against Israel, stating: "What these organizations cannot achieve through democratic elections in Israel, they try to achieve by international coercion."[64] The Likud Member of the Knesset and whip for the governing coalition, David Bitan, demanded that Mr. El-Ad be stripped of his Israeli citizenship.[65] Danny Danon, Permanent Representative of Israel to the United Nations, said: "It is a shame that Israeli groups have been drafted into the diplomatic terror war that the Palestinians are waging against us."[66]

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[60] Peter Cluskey, "No boundaries in threats to International Criminal Court", *Irish Times*, 16 August 2016, and Observatory for the Protection of Human Rights Defenders, "Attacks against Al-Haq's representative in Europe, Ms. Nada Kiswanson", 11 August 2016, and Amjad Iraqi, "Who's sending death threats to Palestinian advocates in The Hague", +972, 17 August 2016.

[61] See also Gili Cohen, "Top official in Christian aid group charged with funnelling funds to Hamas", *Haaretz*, 4 August 2016.

[62] Communications with leaders of the Palestine Center for Human Rights and the Al-Mezan Center for Human Rights; and Gisha, "Split apart: Palestinian civil society in its own words on the impact of the separation policy and the potential should the policy be reversed", March 2016.

[63] See www.btselem.org/settlements/20161014_security_council_address and peacenow.org/page.php?name=lara-addresses-the-unsc#.WN89UG_ytpg.

[64] See www.haaretz.com/israel-news/1.748737.

[65] See www.haaretz.com/israel-news/1.748609.

[66] See hamodia.com/2016/10/16/netanyahu-leftist-groups-that-testified-at-u-n-security-council-beyond-the-pale/.

48. Notwithstanding these toxic attacks and the failure of the Government to provide the protections and space for civil society to operate, several prominent Israeli intellectuals and advocates publicly defended B'Tselem and American Friends of Peace Now for their presentations at the Security Council. Zeev Sternhell stated that: "The one who forced the civil society groups to turn to international public opinion and international institutions is the government of Israel itself", while Michael Sfard, a human rights lawyer, wrote that "the occupation is not an internal Israeli matter. And even if it were, human rights are always a matter for the entire international community".[47]

49. Earlier, in December 2015, Im Tirtzu, an ultranationalist Israeli organization hostile to the country's human rights movement, released a short inflammatory video accusing four notable Israeli human rights leaders of abetting murder and terrorism and acting as hostile foreign agents and moles (*shtulim* in Hebrew).[48] The video, which has been viewed several hundred thousand times since its release, opens with a young Arab in a staged urban setting raising his arm to attack the viewer of the video with a knife. The frame freezes, and the narrator then intones:

> Before the next terrorist stabs you, he already knows that Yishai Menuhin, a planted agent belonging to Holland, will make sure to protect him from a Shin Bet interrogation. The terrorist also knows that Avner Gvaryahu, a planted agent belonging to Germany, will call the soldier who tries to prevent the attack a "war criminal". He also knows that Sigi Ben-Ari, a planted agent belonging to Norway, will protect him in court. Before the next terrorist stabs you, he already knows that Hagai El-Ad, a planted agent belonging to the European Union, will call Israel a "war criminal". Hagai, Yishai, Avner and Sigi are Israelis. They live here with us, and are implants. While we fight terror, they fight us.

50. Dr. Yishai Menuhin is the Executive Director of the Public Committee against Torture, which campaigns against the harsh treatment by Israeli security organizations. Avner Gvaryahu is outreach director with Breaking the Silence, an organization of Israeli military veterans who publicize testimonies by Israeli soldiers in the Occupied Palestinian Territory, including accounts of human rights violations. Sigi Ben-Ari is a lawyer who works with Hamoked — Centre for the Defence of the Individual, which focuses on Israeli human rights violations in the Occupied Palestinian Territory through legal advocacy. And Hagai El-Ad is the Executive Director of B'Tselem. The video displays pictures of the four individuals. Im Tirtzu, while a private organization, has close ties to current and recent Israeli cabinet ministers and has a history of vehemently attacking Israeli civil liberties organizations and successfully lobbying the current Government to enact restrictive legislation against human rights defenders. Following the release of the video (along with an accompanying report by Im Tirtzu denouncing a wider number of Israeli human rights groups),[49] a number of staff in the targeted groups received death threats and the names, addresses and pictures of some of their staff were published on the Internet.[50] Among the commentaries in the Israeli press denouncing the Im Tirtzu video, Mira Sucharov wrote that it equated human rights and civil liberties with treason. She added that only a distinctly anti-democratic element of society would consider the upholding of basic democratic norms

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[47] Zeev Sternhell, "Yes, Israelis, we must air our dirty laundry in public", *Haaretz*, 21 October 2016; Michael Sfard, "It's every Israeli's right, and duty, to speak up — including at the UN", *Haaretz*, 24 October 2016. Because of his human rights advocacy, Michael Sfard became the target of political espionage by Regavim, an ultranationalist and partly State-funded organization with close ties to the Israeli settlement movement: see Uri Blau, "Did Israeli settler group use government funds to spy on human rights NGOs?" *Haaretz*, 19 January 2016.

[48] See www.youtube.com/watch?v=02u_J2C-Lso.

[49] See www.docdroid.net/9vaiR15/foreign-agents-report.pdf.html.

[50] Ofra Edelman, "Left-wing Israeli activists facing violence, death threats", *Haaretz*, 29 July 2016; Human Rights Defenders Fund, communiqué to the Special Rapporteur; Chemi Shalev, "Im Tirtzu and the proto-fascist plot to destroy Israeli democracy", *Haaretz*, 16 December 2015; and Robert Mackey, "Group calls Israelis 'foreign agents' for work on behalf of Palestinians" *New York Times*, 15 December 2015.

and practices, including adhering to the rule of law and upholding the rights of the individual, as cause for inciting against the citizens engaged in those democratic practices."[71]

91. Breaking the Silence has faced an exceptionally harsh campaign of vilification by Israeli political leaders in recent months. Described by its Executive Director, Yuli Novak, as a "liberal and moderate" organization of Israeli combat soldiers who oppose the occupation "because to rule over millions of people without rights is immoral and bad for Israel", Breaking the Silence has been the target of repeated denunciations by the Ministers of Defence and Education, who have instructed the Israeli army and schools not to invite its members to speak at military and school events. When a non-profit art gallery in Jerusalem planned to host an event for Breaking the Silence in February 2017, the Jerusalem Municipality, following a directive from the Minister of Culture, ordered the gallery to be shut down.

92. In 2016, the President of Ben-Gurion University in Beersheva cancelled a decision by the heads of the Middle East Department to bestow an award on Breaking the Silence for Jewish-Arab understanding. In explaining her decision, the President stated that the organization was outside the national consensus. Lecturers at the university subsequently awarded an alternative prize to the organization as recompense. In February 2017, Prime Minister Netanyahu ordered the Ministry of Foreign Affairs to reprimand the Belgian ambassador to Israel after Belgian Prime Minister Charles Michel met with leaders from Breaking the Silence and B'Tselem during a State visit. Prime Minister Netanyahu had earlier called upon the Belgian and British Prime Ministers to stop any funding of Breaking the Silence by their Governments. In response to these attacks, *Haaretz*, in a recent editorial, criticized the political denunciations of Israeli human rights defenders, stating that "B'Tselem and Breaking the Silence are not only legitimate organizations, they should be a source of pride for Israel".[72]

93. This intensifying chill has been extended to international human rights organizations that investigate human rights concerns in the Occupied Palestinian Territory. In late February 2017, the Government of Israel rejected a work permit application submitted by Human Rights Watch for its recently appointed Director for Israel and Palestine. In its letter of rejection dated 20 February 2017, the Israeli Population and Immigration Authority stated that Human Rights Watch "public activities and reports have engaged in politics in the service of Palestinian propaganda, while falsely raising the banner of 'human rights'". The organization, which has worked in Israel for almost three decades, has assiduously advocated for human rights in the Occupied Palestinian Territory. Over the years, it has issued a number of reports critical of Israel, but has also cited the Palestinian Authority and Hamas for human rights violations. Its research and advocacy for global human rights are well respected internationally.[73]

Restrictive legislation

94. Accompanying the mounting climate of threats and assaults on Palestinian and Israeli human rights defenders has been an assertive campaign by the Government of Israel to enact a series of restrictive statutes designed to circumscribe and publicly shame the work of human rights organizations in Israel who advocate for an end to the occupation. The most prominent of these statutes is the law requiring disclosure of support by foreign governmental entities (known as the NGO Disclosure Law), which was adopted by the Knesset in July 2016. The law requires that any Israeli non-governmental organization (NGO) that receives the majority of its funding from foreign State sources must declare that information in all communications with Israeli public officials, as well as in any media and

[71] "Ido Teitan's pernicious video equates human rights with treason", *Haaretz*, 16 December 2015.

[72] "Why Breaking the Silence?", *Haaretz*; "Woe to the silence-breakers", *Haaretz*; "Open season of regime opponents", *Haaretz*; "Netanyahu summons ambassador for rebuke over Belgium PM's meeting with left-wing NGOs", *Haaretz*; "Education Minister: Breaking the Silence poisons our children", *Arutz Sheva*; "Protesters chant in anger as 'Breaking the Silence' wins alternative university prize", *Haaretz*; "Court to decide if Israel can force Breaking the Silence to reveal its sources", *Haaretz*.

[73] See www.hrw.org/news/2017/02/24/israel-human-rights-watch-denied-work-permit.

Internet communications and any advocacy literature and research reports. A breach of the law could trigger fines of NIS 29,000 (approximately $7,500). News reports have estimated that of the 27 Israeli NGOs believed to be affected by the law, 25 are human rights groups, such as B'Tselem, the Association for Civil Rights in Israel, Breaking the Silence and Ir Amin. The law was crafted so that it does not apply to Israeli NGOs that receive funding from foreign private sources, a number of which have a nationalist orientation and support many of the features of the occupation. Besides being opposed by many Israeli human rights defenders, the legislation was criticized by the United States of America Department of State, four major party coalitions in the European Parliament, United Nations human rights experts and the Office of the United Nations High Commissioner for Human Rights. The European Union stated that the NGO disclosure law undermined the values of democracy and freedom of speech in Israel and went beyond the legitimate need for transparency.[74]

55. The Knesset has recently been considering several proposed bills, described below, that aim to further restrict the social and political space for Israeli human rights organizations working on issues dealing with the occupation.

56. One bill, proposed by members of the governing coalition, would eliminate the tax benefits for those Israeli residents who donate to any Israeli NGO that releases statements accusing the State of Israel of committing war crimes and any institution that takes part in calls for a boycott of the State of Israel. The Israel Democracy Institute has criticized the proposed legislation, stating that it contains a vague definition with a clear political element and that the question remains whether a non-profit that exposes war crimes carried out by Israel is harming the State or safeguarding its moral character.[75]

57. The Knesset is also deliberating on a bill that would impose fees on Israeli NGOs that receive more than 50 per cent of their funding from foreign government sources, when such organizations apply for State documents under the Freedom of Information Act. Currently, all NGOs are exempt from paying fees for information obtained under the Act. The proposed statute would not only require the targeted NGOs, a large number of whom are human rights defenders working on human rights issues related to the occupation, to pay the application fee, but would require them to pay double the normal fee.[76]

58. In January, the Knesset approved the preliminary reading of a bill that would empower the Minister of Education to forbid individuals or organizations from entering schools if their human rights or political activities outside school could, in the opinion of the Minister, "lead to Israeli soldiers' prosecution in international courts or foreign countries for actions carried out as part of their military duty". The bill would criminalize any individual or organization disobeying the Minister's direction and appears to be specifically aimed at Breaking the Silence. In speaking on behalf of the bill, the Minister stated: "Breaking the Silence doesn't only want to poison the world against us, but to poison our children with their lying reports."[77]

59. In December 2016, a bill that would ban national service volunteers from working on a temporary basis with Israeli organizations that receive the majority of their funding from abroad passed its preliminary reading in the Knesset. The national service volunteer programme enables young Israelis to work at designated institutions and organizations as

[74] "After contentious debate, Knesset passes NGO law", *The Times of Israel*, 12 July 2016; Barak Ravid, "European Union: 'NGO Law' risks undermining Israeli democratic values", *Haaretz*, 12 July 2016; "US voices concern for free speech over Israeli NGO bill", *Times of Israel*, 12 July 2016.See also www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20177&LangID=E; and a letter to the President of Israel from 22 human rights organizations, 19 June 2016, available from www.acri.org.il/en/2016/06/19/dear-mr-president-from-22-human-rights-organizations/.

[75] Jonathan Lis, "Ministers okay bill revoking tax exemptions for NGOs that accuse Israel of war crimes," *Haaretz*, 1 March 2017.

[76] Jonathan Lis, "New Israeli bill would have left-wing NGOs pay for info from State", *Haaretz*, 26 February 2017.

[77] Raoul Wootliff, "Bill banning Breaking the Silence from schools clears initial hurdle", *Times of Israel*, 11 January 2017.

an alternative to mandatory military service. Prime Minister Netanyahu promised to remove such organizations from the eligibility list following the criticism by B'Tselem of the country's settlement policy at the United Nations in October. Gisha, which would be adversely impacted by the proposed legislation, stated that the bill "is about labelling and excluding — as a first step towards delegitimizing — civil society organizations. To put it more bluntly — this is political persecution".[78]

60. In early March 2017, the Knesset enacted legislation that would deny an entry visa or residency permit to any non-citizen if that person had worked for an organization that had issued a public call to boycott the State of Israel or had agreed to participate in such a boycott. That would include anyone who focused their call for a boycott only on the Israeli settlements in the Occupied Palestinian Territory. The legislation appears to be the formalization of an earlier policy announced in August 2016 by the Minister of Public Security to deport international human rights defenders who support the Boycott, Divestment, Sanctions movement and to prevent others from entering the country. In December 2016, Isabel Apawo Phiri, a Malawian citizen who serves as Associate General Secretary of the World Council of Churches, was denied entry and then deported after arriving at Ben Gurion International Airport. The Israeli authorities asserted that the denial of entry was due to the alleged support of her organization for and involvement with the Boycott, Divestment, Sanctions movement.[79] Adalah, an Israeli human rights organization, criticized the legislation, stating: "Freedom of expression is not just the right to express oneself, but also the right to be exposed to perspectives … considered outrageous and infuriating by the majority of [Jewish] Israelis."[80]

61. Palestinian human rights organizations have stated that the Knesset statutes and proposed bills adversely affect them as well. Palestinian human rights defenders working in occupied East Jerusalem invariably possess an Israeli residency permit, which they fear may be revoked by the Ministry of the Interior on the grounds that they have breached their loyalty to the State of Israel by advocating human rights issues, supporting boycotts or encouraging the acknowledgment of the Palestinian exodus between 1947 and 1949 (the *Nakba*). Palestinian human rights organizations also state that these legislative offences intensify the atmosphere of fear and repression for human rights defenders. The impact is also being felt by Palestinian human rights defenders living in Israel on residency permits, such as Omar Barghouti, a co-founder of the Boycott, Divestment, Sanctions movement. Restrictions on his international travel were temporarily imposed in April 2016, just after the Intelligence and Transportation Minister had called for the "targeted civil elimination" of the leaders of the movement with the help of Israeli intelligence.[81]

C. Conclusions

62. **The 50-year occupation of the Palestinian territories, which becomes more pervasive by the day with no end even remotely in sight, has been profoundly corrosive of human rights and democratic values. How could it be otherwise? To perpetuate an alien rule over almost 5 million people, against their fervent wishes, inevitably requires the repression of rights, erosion of the rule of law, the abrogation of international commitments, the imposition of deeply discriminatory practices, the hollowing-out of well-accepted standards of military behaviour, subjugation of the humanity of the "other", denial of trends that are plainly evident, the embrace of illiberal politics and — the focus of the present report — the scorning of those civil**

[78] Gisha, "The battle is not for national service spots, it is for the very foundation of democracy in Israel", 10 November 2016.

[79] Ilan Lior, "In first, Israel denies entry to religious official citing support of BDS movement", *Haaretz*, 6 December 2016.

[80] See www.adalah.org/en/content/view/9043.

[81] See communication sent to Special Rapporteurs by 12 Palestinian human rights organizations, "Urgent appeal concerning human rights defenders working on OPT and Israel," 13 June 2016, available from alhaq.org/images/stories/PDF/2012/Letter_on_HRDs_pdf.pdf; and Amnesty International, "Israeli government must cease intimidation".

society organizations that raise uncomfortable truths about the disfigured state of human rights under occupation.

63. **A Government that honours human rights and democratic values, and takes seriously its obligations under the Declaration on Human Rights Defenders would protect and encourage the work of human rights defenders, not ostracize and isolate them. It would publicly denounce any incitement against human rights defenders and would certainly not engage in inflaming the public against them. It would recognize the fundamental status in law of the freedoms of association, assembly, expression and opinion, and of movement, and would do all that it could to enable human rights defenders to enjoy them. Such a Government would respect the critical scrutiny of their work, even if their reports and allegations excoriated the conduct of that Government. It would treat all NGOs equitably. It would enact legislation to enlarge the freedoms of human rights defenders and it would never impose discriminatory statutes or programmes that impaired their work. If it was to criticize human rights defenders, its comments would be measured and constructive. If and when threats or acts of violence were directed towards human rights defenders, its military and police services would act promptly to impartially investigate and prosecute. It would strive to build collaborative relationships with human rights defenders and take advantage of their experience and expertise to deepen the respect of the public for human rights and their defenders. And such a Government — even one conducting a long-term occupation — would accept that human rights can be infringed only as a last measure and then only in a minimally impairing manner that is subject to meaningful judicial review.**

64. **In all these respects, the Government of Israel has been significantly deficient in honouring its obligations under the Declaration on Human Rights Defenders. On the evidence gathered for the present report, its treatment of human rights defenders, be they Palestinian, Israeli or international, who work on the vital issues arising from the occupation has been contrary to the basic guarantees of international human rights law. Nor is the situation improving. As the occupation becomes further entrenched[82] and as human rights defenders persist with their intrepid activism to investigate and oppose the regime of human rights violations that is integral to the occupation, all indications are that they will continue to be among the prime targets of those who are intolerant of their criticisms, yet alarmed by their effectiveness.**

IV. Recommendations

65. **The Special Rapporteur recommends that the Government of Israel comply with international law and bring a complete end to its 50 years of occupation of the Palestinian territories occupied since 1967. The Special Rapporteur further recommends that the Government of Israel take the following immediate measures:**

(a) **Repeal its recent legislation confiscating private Palestinian lands;**

(b) **Comply fully with Security Council resolution 2334 (2016) concerning the settlements;**

(c) **End the practice of demolition of Palestinian homes and enable the creation of a fair and transparent building permit system that would comply with the right to housing;**

(d) **Ensure the equitable funding of Palestinian education in East Jerusalem;**

(e) **End the blockade of Gaza, lift all restrictions on imports and exports, and facilitate the rebuilding of its housing and infrastructure, with due consideration given to justifiable security considerations;**

[82] See Ian Fisher, "Israel passes provocative law to retroactively legalize settlements", *New York Times*, 6 February 2017, and Isabel Kershner, "Emboldened by Trump, Israel approves a wave of West Bank settlement expansion", *New York Times*, 24 January 2017.

(f) Ensure freedom of movement and the establishment of an equitable permit system for the residents of the Occupied Palestinian Territory.

66. **With respect to human rights defenders, the Special Rapporteur recommends that the Government of Israel immediately take the following measures:**

(a) Fully honour and implement the rights and obligations contained in the Declaration on Human Rights Defenders;

(b) End the use of criminal, legal and security tools to obstruct the legitimate work of human rights defenders, including the use of arbitrary arrests and detentions, and ensure fair and speedy trials for any human rights defenders charged with an offence;

(c) Fully respect the fundamental freedoms of assembly, association, expression and movement in the Occupied Palestinian Territory;

(d) Actively combat incitement against the work of human rights defenders;

(e) Repeal all restrictive legislation targeting human rights defenders;

(f) Take all reasonable steps to demonstrate respect for the work of human rights defenders in the Occupied Palestinian Territory until the end of the occupation.